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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/809,521
Filing Date: March 26, 2004
Appellant(s): MARILLY ET AL.

Theodore C. Shih
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 9, 2009 appealing from the Office action mailed May 22, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Sistanizadeh et al. (Patent No. 6,681,232), hereinafter Sistanizadeh.

2. With respect to claim 1, Sistanizadeh discloses a local assurance management device for a network element (column 8, lines 27-50) in a communication network equipped with a network management system (column 6, lines 41-46; column 5, lines 35-43), where said network element presents a chosen configuration (column 6, lines 1-3) and comprises means for measuring of parameter values in the network (column 19, lines 31-35), and a built-in management information base used to store management data which are representative of said measured parameter values (column 16, lines 13-34), wherein the device comprises management means which are arranged to adapt the configuration of said network element according to at least said management data stored in said management information base, and chosen rules, known as assurance rules, defining a local assurance policy, where said adaptation comprises a change to a measurement policy parameter and/or a change to a report transmission policy to said network management system (column 16, lines 13-34, column 18, lines 48-67).

3. With respect to claim 2, Sistanizadeh discloses a device according to claim 1, wherein said management means are arranged so as to adapt said configuration in

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according to information data coming from at least one other network element (column 18, lines 48-67).

4. With respect to claim 3, Sistanizadeh discloses a device according to claim 1, wherein said adaptation comprises a change to a method of operation of said network element (column 21, lines 48-51).

5. With respect to claim 4, Sistanizadeh discloses a device according to claim 1, wherein said management means include analysis means arranged so as to determine, in accordance with certain of said chosen assurance rules, information data representing the changes in time, over a chosen interval, of parameter values in the network stored in said management information base (column 21, lines 7-14).

6. With respect to claim 5, Sistanizadeh discloses a device according to claim 4, wherein said analysis means are arranged so as to deliver information data representing a trend analysis and/or an analysis of profiles or signatures and/or an analysis of discontinuity and/or an aggregation of network parameter values (column 18, lines 63; column 19, lines 1-35).

7. With respect to claim 6, Sistanizadeh discloses a device according to claim 4, wherein said analysis means are configurable (column 29, lines 5-14).

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8. With respect to claim 7, Sistanizadeh discloses a device according to claim 6, wherein said analysis means are arranged so as perform fresh calculations relating to the network parameters received from said network management system (column 20, lines 65-67; column 21, lines 1-14).

9. With respect to claim 8, Sistanizadeh discloses a device according to claim 1, wherein said management means include alarm means able to trigger the sending of an alarm and/or of information data to said network management system and/or to at least one other network element, in accordance with certain of said chosen assurance rules (column 16, lines 25-34).

10. With respect to claim 9, Sistanizadeh discloses a device according to claim 8, wherein said alarm means are configurable (column 12, lines 65-76; column 13, lines 1-6).

11. With respect to claim 10, Sistanizadeh discloses a device according to claim 8, wherein said information data and said alarms are representative of the results of analyses performed by said analysis means, and/or of data aggregation, effected by said analysis means, and/or of a network parameter value stored in said management information base (column 12, lines 65-76; column 13, lines 1-6).

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12. With respect to claim 11, Sistanizadeh discloses a device according to claim 1, wherein said management means include network observation means defining a flow measurement agent of the end-to-end type, arranged so as to determine information data which are representative of said flow of the end-to-end type in accordance with certain of said chosen assurance rules (column 20, lines 13-26).

13. With respect to claim 12, Sistanizadeh discloses a device according to claim 11, wherein said network observation means are configurable (column 20, lines 35-45).

14. With respect to claim 13, Sistanizadeh discloses a device according to claim 1, wherein said management means include means for the management of service level agreements or SLAs, arranged so as to determine information data representing said agreement management in accordance with certain of said chosen assurance rules (column 6, lines 10-30).

15. With respect to claim 14, Sistanizadeh discloses a device according to claim 13, wherein said service level agreement management means are configurable (column 6, lines 10-30).

16. With respect to claim 15, Sistanizadeh discloses a device according to claim 2, wherein said management means include monitoring means which are able to manage the operation of said analysis means, of said alarm means, of an network observation

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means and of the service level agreement management means, in accordance with at least some of said chosen assurance rules (column 6, lines 49-65; column 16, lines 13-64).

17. With respect to claim 16, Sistanizadeh discloses a device according to claim 15, wherein said monitoring means are supplied with information data by said analysis means and/or said network observation means and/or the service level agreement management means, and are arranged so as to order said alarm means to generate alarms and/or reports in the event of detecting non-compliance with an assurance rule by received the information data (column 6, lines 49-65; column 16, lines 13-64).

18. With respect to claim 17, Sistanizadeh discloses a device according to claim 15, wherein said monitoring means are arranged in the form of a rule engine storing said chosen assurance rules (column 6, lines 49-65; column 16, lines 13-64).

19. With respect to claim 18, Sistanizadeh discloses a device according to claim 15, wherein that said monitoring means are configurable (column 6, lines 49-65; column 16, lines 13-64).

20. With respect to claim 19, Sistanizadeh discloses a device according to claim 1, wherein said management means are capable of being configured by said network

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management system via an application programming interface of said network element (column 18, lines 48-62).

21. With respect to claim 20, Sistanizadeh discloses a device according to claim 1, wherein said management means are capable of being configured by said network management system via an application programming interface of said network element and via said management information base (column 18, lines 48-62).

22. With respect to claim 21, Sistanizadeh discloses a device according to claim 19, wherein said analysis means and/or said alarm means and/or said network observation means and/or said monitoring means and/or the service level agreement management means are capable of being configured by said network management system, via said application programming interface (column 18, lines 48-62).

23. With respect to claim 22, Sistanizadeh discloses a device according to claim 20, wherein said analysis means and/or said alarm means and/or said network observation means and/or said monitoring means and/or the service level agreement management means are capable of being configured by said network management system, via said application programming interface and via said management information base (column 18, lines 48-62).

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24. With respect to claim 23, Sistanizadeh discloses a device according to claim 1, wherein said management means are capable of being configured by said network management system using dedicated commands (column 32, lines 38-51).

25. With respect to claim 24, Sistanizadeh discloses a device according to claim 23, wherein said analysis means and/or said alarm means and/or said network observation means and/or said service level agreement management means and/or said monitoring means are arranged so as to be capable of being configured by said network management system using dedicated commands (column 30, lines 34-48; column 32, lines 38-51).

26. With respect to claim 25, Sistanizadeh discloses a device according to claim 23, wherein said commands are of the "Command Line Interface" type (column 30, lines 34-48; column 32, lines 38-51).

27. With respect to claim 26, Sistanizadeh discloses a network element for a communication network equipped with a network management system, where said network element presents a chosen configuration and including means for the measurement of parameter values in the network and a management information base capable of storing management data representing said parameter values, wherein the network element comprise a device or arrangement (D) in accordance with claim 1 (column 16, lines 13-34, column 18, lines 48-67).

28. With respect to claim 27, Sistanizadeh discloses a network element in accordance with claim 26, further comprising an application programming interface, and wherein said management information base is capable of being configured by said network management system via said application programming interface (column 16, lines 13-34, column 18, lines 48-67).

29. With respect to claim 28, Sistanizadeh discloses a network element in accordance with claim 26, further comprising an application programming interface, and wherein said management information base is capable of being programmed by said network management system via said application programming interface (column 16, lines 13-34, column 18, lines 48-67).

30. With respect to claim 29, Sistanizadeh discloses a network element in accordance with claim 26, wherein the network element is chosen from a group which includes at least one of routers, switches and firewalls (column 12, lines 65-67; column 13, lines 1-6).

31. With respect to claim 30, Sistanizadeh discloses a communication network according to claim 26, comprising a network management system, wherein the communication network comprises a large variety of network elements comprising at least one of a server equipped with a firewall, a switch, an edge router, or a core router

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(column 12, lines 65-67; column 13, lines 1-6; column 19, lines 65-67; column 20, lines 1-10; column 11, lines 14-22).

32. With respect to claim 31, Sistanizadeh discloses a network in accordance with claim 30, wherein each network element is arranged to deliver alarms and/or information data of various types to said network management system (column 16, lines 25-34).

33. With respect to claim 32, Sistanizadeh discloses a method managing network technologies comprising:

Applying a local assurance managing device for a network element in a communication network equipped with a network management system

Wherein said network element presents a chosen configuration and comprises means for measuring parameter values in the network, and a built-in management information base used to store management data which are representative of said measure parameter values, and

Wherein the device comprises management means which are arranged to adapt the configuration of said network elements according to at least said management data stored in said management information base, and chosen rules, known as assurance rules, defining a local assurance policy, where said adaptation comprises a change to a measurement policy parameter and/or a change to a report transmission policy to said network management system (column 19, lines 65-67; column 20, lines 1-10).

34. With respect to claim 33, Sistanizadeh discloses a method according to claim 22, wherein said network technologies are chosen from a group which includes transmission networks, comprising at least one of a Wavelength Division Multiplexing (WDM), a Synchronous Optical Network (SONET), and a Synchronous Digital Hierarchy (SDH) type, management networks, of the Internet-IP and Asynchronous Transfer Mode (ATM) type, and speech networks, of the conventional, mobile and Next Generation Network (NGN) type (column 9, lines 40-50).

(10) Response to Argument

35. With respect to claim 1, applicant argues that Sistanizadeh does not disclose changing the configuration of the network according to management data and assurance rules, implementing a change to a report transmission policy, a local assurance policy, or a change to a measurement policy parameter and/or a change to a report transmission policy, as recited in the claimed invention.

The examiner respectfully disagrees. Sistanizadeh discloses changing the configuration of the network according to management data and assurance rules (column 21, lines 45-64, where the *management module instructs* anticipates management data, and *necessary configuration changes to provide the increased bandwidth* anticipates changing the configuration according to an assurance rule), implementing a change to a report transmission policy (column 17, lines 50-53, where

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the *QoS monitoring/reporting* anticipates a report transmission policy), a local assurance policy (column 17, lines 56-61, where the *SLM* anticipates a local assurance policy), and a change to a measurement policy parameter and/or a change to a report transmission policy (column 18, lines 20-32, where the *increase and decrease [in] bandwidth subscriptions* anticipates a change to a measurement policy parameter; column 17, lines 50-53, where *QoS monitoring/reporting* anticipates a change to a report transmission policy as a result of *automatic bandwidth increases/decreases*).

In addition, Sistanizadeh discloses, "an SNMP agent Stores and retrieves management data as defined by the MIB" (column 16, lines 25-25), furthermore, the managed data of Sistanizadeh includes data from, "The measurement service module 161 [which] looks at the raw data from the various monitoring devices, as accumulated by the monitoring service 157" (column 19, lines 5-7), whereby the modules are a part of "the SLM application server 107 relies on a Relational Database 109, which contains information on the Network and Service Topologies, network and service metrics, SLA parameters, customer demarcation points, service scope and boundaries, etc." (column 7, lines 41-44).

36. The applicant further argues that Sistanizadeh does not disclose, where said adaptation comprises a change to a measurement policy parameter and/or a change to a report transmission policy to said network management system.

The examiner respectfully disagrees. The examiner affirms the argument previously presented, whereby the applicant has written the claim in the alternative

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(and/or), and Sistanizadeh discloses a change to the measurement policy “as QoS monitoring/reporting and automatic bandwidth increases/decreases” (column 17, lines 50-53).

37. The applicant further argues that Sistanizadeh does not disclose, adapt[ing]the configuration of said network element according to...chosen rules, known as local assurance rules, defining a local assurance policy.

The examiner respectfully disagrees. Sistanizadeh discloses assurance rules, and a local assurance policy by way of Quality of Service, specifically using the Service Level Agreement (SLA) metrics, which include “Network Availability”, “Packet Loss”, “Jitter”, and “Service Availability” (column 6, lines 15-30). The SLA exemplified in Sistanizadeh anticipates the definition of a local assurance policy as laid out in the Applicant's specification (column 28, lines 21-46).

38. With respect to claim 2, applicant argues that Sistanizadeh does not disclose, adapt[ing] said configuration according to information data coming from at least one other network element.

The examiner respectfully disagrees. Sistanizadeh discloses, “adapt[ing] the customer service to the detected application” (Column 29, lines 40-46) whereby the detected application is receiving information from an analyzer where, “the analyzer 128is a software module running on a separate computer” (column 28, lines 47-50).

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39. With respect to claim 3, applicant argues that Sistanizadeh does not disclose, wherein said adaptation comprises a change to a method of operation of said network element.

40. The examiner respectfully disagrees. Sistanizadeh disclosure of changing the bandwidth per an operation of the customer (column 29, lines 40-46, start of a File Transfer Protocol) anticipates a change in method of operation, not merely because the amount of bandwidth simply changed, but rather because the type and level of service changed to accommodate the operation (column 28, lines 40-46, provide a guaranteed bandwidth with minimum jitter dynamically at the detected start of a voice over IP session)

41. With respect to claim 4, applicant argues that the agents of Sistanizadeh does not disclose, "determin[ing], in accordance with certain of said chosen assurance rules, information data representing the changes in time."

The examiner respectfully disagrees. Sistanizadeh discloses reporting statistics in the form of a graph, showing the network traffic of a particular user of time (column 21, lines 7-14). Such a display, shown as a window in time, provides a visual model of the data transmitted back and forth between network devices, and as a result indicated changes in traffic volume during the window in question. Such changes are necessarily viewed through the prism of local assurance rules, via Sistanizadeh's Quality of Service parameters of the SLM (column 17, lines 50-55), using the remote monitor protocol (RMON) agents (column 21, lines 7-14; column 23, lines 26-32).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Rubin Blake/

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